

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN ELECTRONIC EXAMINATION OF THE)	
APPLICATION OF THE FUEL ADJUSTMENT)	CASE NO.
CLAUSE OF EAST KENTUCKY POWER)	2021-00054
COOPERATIVE, INC. FROM NOVEMBER 1, 2018)	
THROUGH OCTOBER 31, 2020)	

ORDER

This matter arises on motions for confidential treatment filed by East Kentucky Power Cooperative, Inc. (EKPC) on March 22, 2021, and on April 19, 2021. In the March 22, 2021 motion, EKPC requested, pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, that the Commission grant confidential treatment for ten years for documents produced in response to Commission Staff's First Request for Information (Staff's First Request), Items 4 and 11.

In the April 19, 2021 motion, EKPC requested, pursuant to 807 KAR 5:001, Section 13, and KRS 61.878, that the Commission grant confidential treatment for ten years for documents produced in response to Commission Staff's Second Request for Information (Staff's Second Request), Item 10a.

The Commission is a public agency subject to Kentucky's Open Records Act, which requires that all public records "be open for inspection by any person, except as otherwise provided by KRS 61.870 to 61.884."¹ In support of its motions, EKPC argued for the application of KRS 61.878(1)(c)(1), which exempts records that are "[g]enerally

¹ KRS 61.872(1).

recognized as confidential or proprietary, which if openly disclosed would permit an unfair commercial advantage to competitors of the entity that disclosed the records. Exceptions to the free and open examination of public records contained in KRS 61.878 should be strictly construed.² The party requesting that materials be treated confidentially has the burden of establishing that one of the exceptions is applicable.³

MARCH 22, 2021 MOTION

EKPC sought confidential treatment for coal supply solicitations and its Fuel and Emissions Department Procurement Manual, which were provided in response to Staff's First Request, Items 4 and 11, respectively. EKPC argued that coal supply solicitations and procurement policies describe the business planning assumptions and procurement strategy of EKPC with regard to fuel as well as the information received and generated by EKPC in the course of conducting written and oral solicitations for fuel. EKPC argued that it included procurement strategies, coal specifications received from third-party bidders, pricing data for coal bids received from third-party bidders, and recommendations from EKPC staff regarding the selection of particular vendors to supply fuel to its generating fleet.

Having considered the motion and the material at issue, the Commission finds that EKPC's March 22, 2021 motion is granted. Coal supply solicitations and the fuel procurement manual provide very specific insight into EKPC's internal planning with regards to fuel purchasing, including reasons for accepting or rejecting contracts. This same type of information was deemed confidential by the Commission in one of EKPC's

² See KRS 61.871.

³ 807 KAR 5:001, Section 13(2)(c).

Fuel Adjustment Clause cases.⁴ Any executed fuel contracts will, however, be subject to public filing as required by 807 KAR 5:056, Section 2(1). The documents provided in response to Staff's First Request, Items 4 and 11 meet the criteria for confidential treatment and is exempted from public disclosure pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(c)(1).

APRIL 19, 2021 MOTION

EKPC sought confidential treatment for forecasted fuel costs through the end of 2022 provided in response to Staff's Second Request, Item 10a. EKPC argued that if forecasted fuel costs were available to the public, competitors and vendors would have an unfair advantage in contract negotiations and bid solicitations as they would know where EKPC believed pricing would fall. EKPC stated that this one-sided exchange of knowledge would work to its severe prejudice and, by extension, to its customers.

Having considered the motion and the material at issue, the Commission finds that EKPC's April 19, 2021 motion is granted. Competitors and sellers could manipulate the bidding process based on EKPC's evaluation of the fuel market. EKPC's forecasted fuel costs were granted confidential treatment in a prior EKPC acquisition case.⁵ The document provided in response to Staff's Second Request, Item 10a meets the criteria for confidential treatment and is exempted from public disclosure pursuant to 807 KAR 5:001, Section 13, and KRS 61.878(1)(c)(1).

⁴ Case No. 2020-00005, *An Electronic Examination of The Application of the Fuel Adjustment Clause of East Kentucky Power Cooperative, Inc. from May 1, 2019 Through October 31, 2019* (Ky. PSC Apr. 9, 2020), Order at 1–2.

⁵ Case No. 2015-00267, *Application of East Kentucky Power Cooperative, Inc. for Approval of the Acquisition of Existing Combustion Turbine Facilities from Bluegrass Generation Company, LLC at the Bluegrass Generating Station in Lagrange, Oldham County, Kentucky and for Approval of the Assumption of Certain Evidences of Indebtedness* (Ky. PSC Nov. 24, 2015), Order at 1, 3.

IT IS THEREFORE ORDERED that:

1. EKPC's March 22, 2021 and April 19, 2021 motions for confidential treatment are granted.

2. The designated material granted confidential treatment by this Order shall not be placed in the public record or made available for public inspection for ten years or until further Order of this Commission.

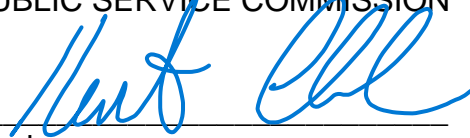
3. Use of the designated material granted confidential treatment by this Order in any Commission proceeding shall comply with 807 KAR 5:001, Section 13(9).

4. EKPC shall inform the Commission if the designated material granted confidential treatment by this Order becomes publicly available or no longer qualifies for confidential treatment.

5. If a nonparty to this proceeding requests to inspect the material granted confidential treatment by this Order and the period during which the material has been granted confidential treatment has not expired, EKPC shall have 30 days from receipt of written notice of the request to demonstrate that the material still falls within the exclusions from disclosure requirements established in KRS 61.878. If EKPC is unable to make such demonstration, the requested material shall be made available for inspection. Otherwise, the Commission shall deny the request for inspection.

6. The Commission shall not make the requested material available for inspection for 30 days from the date of service of an Order finding that the material no longer qualifies for confidential treatment in order to allow EKPC to seek a remedy afforded by law.

PUBLIC SERVICE COMMISSION



Chairman

Vice Chairman

Commissioner

ENTERED
MAY 09 2022
rcs
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:



Executive Director

*L Allyson Honaker
Goss Samford, PLLC
2365 Harrodsburg Road, Suite B325
Lexington, KENTUCKY 40504

*East Kentucky Power Cooperative, Inc.
4775 Lexington Road
P. O. Box 707
Winchester, KY 40392-0707

*East Kentucky Power Cooperative, Inc
East Kentucky Power Cooperative, Inc.
4775 Lexington Road
P. O. Box 707
Winchester, KY 40392-0707